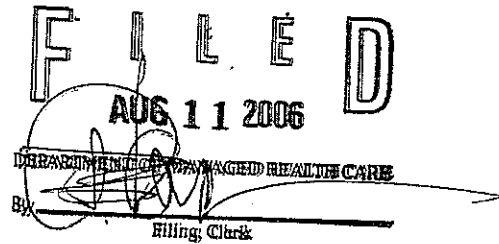


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8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
10 OF THE STATE OF CALIFORNIA

11 IN THE MATTER OF:

12 Kaiser Foundation Health Plan, Inc.

14 Respondent.

Enforcement Matter No.: 06-162

13 **CONSENT AGREEMENT**

16 This Consent Agreement is made and entered into on the 9th day of August 2006, by and
17 between KAISER FOUNDATION HEALTH PLAN, INC. (Northern California Region), a
18 California non-profit public benefit corporation (hereafter "Health Plan"), and the
19 DEPARTMENT OF MANAGED HEALTH CARE (hereafter the "Department") with regard to
20 the internalization and provision of kidney transplant and related services to Health Plan
21 enrollees at the renal transplant center at Kaiser Foundation Hospitals San Francisco (the
22 "RTC").

24 WHEREAS, Health Plan is a full service health care service plan, license number 933
25 0055, subject to the regulatory jurisdiction of the Department under the Knox-Keene Health Care
26 Service Plan Act (Health and Safety Code sections 1340 et seq.) (the "Act").
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1 WHEREAS, upon receiving a complaint in March 2006, the Department immediately
2 initiated an investigation concerning the provision of renal transplant and related services to
3 Health Plan enrollees at the RTC and Health Plan's oversight of the RTC and The Permanente
4 Medical Group ("TPMG") with respect to quality assurance, medical and administrative
5 capacity, continuity of care, availability and accessibility of services for Northern California
6 enrollees in need of end stage renal services including transplantation.

7 WHEREAS, Health Plan and the Department entered into a Stipulated Agreement on
8 May 10, 2006 setting forth the terms and conditions under which Health Plan could continue to
9 arrange for renal transplant services for its enrollees at the RTC and imposing the obligations and
10 requirements on Health Plan set forth therein.

11 WHEREAS, the Department on May 12, 2006 issued an Order requiring Health Plan to
12 file a transition plan with the Department prior to the RTC suspending the renal transplant
13 services to ensure continuity of care and the availability of covered services to enrollees,
14 appropriate registration with United Network of Organ Sharing regarding enrollees' placement
15 on the wait list and appropriate accrual and transfer of accrued wait time. The Order also
16 required the presence of a Monitor selected by the Department with immediate and unrestricted
17 access to all of the books and records and information about all aspects of the operation and
18 administration of the RTC and Health Plan's oversight of the RTC.

19 WHEREAS, in accord with the Department's Order, Health Plan developed a Transition
20 Plan to transfer patients on the wait list at the RTC to other renal transplant centers, while
21 maintaining continuity of care pending such transfer. This Transition Plan, developed by Health
22 Plan and to be reviewed, approved and supervised by the Department, entails an unprecedented
23 degree of planning, collaboration, and communication between and among Health Plan, the
24 RTC, TPMG, contracted renal transplant centers and their medical staffs, UNOS, the organ
25 procurement organizations in Northern California, the California Department of Health Services,
26 and the Department to enable an orderly transfer of patients. The Transition Plan includes
27 communication and outreach with patients, subject to the Department's review and approval,
28

1 designed to inform patients about their status and the transfer process, as well as answer clinical
2 and administrative questions.

3 WHEREAS, on June 13, 2006, after a two day on-site survey at the RTC, the Department
4 issued its Preliminary Report for a Non-Routine Medical Survey of Kaiser Foundation Health
5 Plan, Inc. (the "Non-Routine Medical Survey"). The survey examined the adequacy of Health
6 Plan's oversight of administrative and clinical functions associated with the renal transplant and
7 related services at the RTC.

8 WHEREAS, the June 13, 2006 Preliminary Report identified Health Plan's deficiencies
9 in the following areas:

- 10 1. Failure to provide oversight of its contracting medical group in the
11 administration of its kidney transplant program. [CCR title 28, section
12 1300.70(b)(2)(C), (F) and (G)(1)-(5)]
- 13 2. Failure to ensure that its contracting medical group had sufficient
14 administrative capacity to transfer enrollees from externally contracted
15 kidney transplant centers into the medical group's kidney transplant
16 program. [Health & Safety Code section 1367(g); CCR title 28, section
17 1300.67.3(a)(2)]
- 18 3. Failure to ensure that its contracting medical group consistently provided
19 timely accessibility to medically required specialists in its kidney transplant
20 program. [Health & Safety Code section 1367(d) and (e)(1); CCR title 28,
21 section 1300.68(a), (a)(1), (d) and (e)]
- 22 4. Failure to ensure that its contracting medical group utilized a formal system
23 for handling and processing member grievances. [Health & Safety Code
24 section 1368(a); CCR title 28 section 1300.68(a) and (e)(2)]
- 25 5. Failure to ensure that specialty services related to kidney transplantation was
26 provided in a manner providing continuity of care and ready referral of
27 patients. [Health & Safety Code section 1367(d); CCR title 28, section
28 1300.67.1(e)]

1 The Report further informed Health Plan that these deficiencies had been referred to the
2 Department's Office of Enforcement.

3 WHEREAS, on July 13, 2006, Health Plan submitted to the Department a plan of
4 correction, including an updated comprehensive Transition Plan, which is under review.

5 WHEREAS, on its own accord and consistent with its community benefit activities,
6 Health Plan has decided to make a charitable grant, as confirmed in the letter attached as Exhibit
7 A, to support Donate Life California in connection with its efforts and initiatives to increase
8 organ and tissue donor registration in California and increase the number of organs available for
9 transplantation. Health Plan is making this charitable grant through the East Bay Community
10 Foundation ("EBCF"), an independent nonprofit tax exempt corporation with experience and
11 expertise in the oversight and administration of charitable grants, with direction that the funds be
12 used fully and exclusively in support of Donate Life California's efforts and initiatives. EBCF
13 will ensure that the grant is used for its intended purposes with an emphasis on efforts directed at
14 minorities and medically underserved populations to address increased and unmet needs in these
15 populations.

16 WHEREAS, the Department acknowledges the following as factors in mitigation: Health
17 Plan's open cooperation with the Department since the commencement of the Department's
18 investigation, Health Plan's efforts with respect to implementation of the Transition Plan, and
19 Health Plan's charitable support of efforts to increase donor registration and the supply of organs
20 available for transplant.

21 FINALLY, WHEREAS, by entering into this Consent Agreement, Health Plan does not
22 admit any liability or violation of the Act. However, the parties agree that it is in the best
23 interests of Health Plan's enrollees to enter into this Consent Agreement, and thereby settle the
24 above-referenced enforcement matter and all issues, accusations, and claims that the Department
25 has against Health Plan related to, or arising from, the deficiencies identified in the Non-Routine
26 Medical Survey, save and except for Health Plan's handling of member complaints as it relates
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1 to Health Plan's quality oversight mechanisms and the effectiveness of Health Plan's grievance
2 and complaint procedures described in paragraph III below, which are the subject of continuing
3 investigation and are specifically excluded from resolution by this Agreement. Moreover, this
4 Agreement does not address or resolve any issues arising from conduct after June 13, 2006
5 including activities relating to the completion of Health Plan's Transition Plan for transferring
6 enrollees to other facilities for evaluation and renal transplants.

7 NOW, THEREFORE, the Department and Health Plan mutually agree to enter into this
8 Consent Agreement, as follows:

9 I. Health Plan shall continue to: ensure continuity of care for patients; ensure ready
10 access to medical services for enrollees, including pre-transplant, transplant surgery, and post-
11 transplant services and appropriate pharmaceuticals; take all necessary steps to effect the
12 coordination of enrollees' UNOS wait time transfers in order to preserve enrollees' accrued
13 waiting times; and verify the capacity of other organizations to accept transfer of patients.
14 Further, Health Plan shall use all necessary efforts and fully cooperate to effectuate the safe and
15 orderly transfer of enrollees to the University of California, Davis and University of California,
16 San Francisco medical centers or alternate transplant centers until all clinically appropriate
17 enrollees at the RTC are successfully transferred and the Department approves Health Plan's
18 discontinuation of transplant services for enrollees at the RTC. Finally, Health Plan shall
19 promptly implement all existing orders of the Department.

20 II. Health Plan will ensure that enrollees who may be considered for transplant
21 evaluation continue to receive all medically necessary services in accord with the
22 recommendations of their treating nephrologists and other physicians and regulatory
23 requirements prior to their placement on the UNOS list, but will not initiate any additional
24 transplant evaluations of enrollees for UNOS wait listing at the RTC. Health Plan will refer all
25 new evaluations for UNOS listing, in accordance with the enrollee's preference, to either the
26 University of California, Davis, or University of California, San Francisco, or another transplant
27
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1 center upon agreement of the enrollee and Health Plan. Health Plan agrees that it will not enter
2 into any joint venture to provide renal transplant services or attempt to internalize renal
3 transplant services without prior review and approval by the Department of a notice of material
4 modification addressing all contemplated activities and contractual arrangements.

5 III. That on August 1, 2006, the Department commenced a non-routine medical
6 survey of Health Plan's quality oversight program, including but not limited to a review of
7 Health Plan's handling of member complaints concerning the services at the RTC. On and after
8 August 1, 2006, Health Plan shall make its books and records, including the medical records of
9 its contracted providers, available to the Department in accord with section 1380 of the Health
10 and Safety Code.

11 IV. Health Plan will reimburse the Department for all costs incurred for placement of
12 the Monitor and for departmental staff participating in the Non-Routine Medical Survey
13 conducted in May 2006 and the portion of the non-routine survey set forth in Paragraph III which
14 addresses issues concerning the RTC.

15 V. The Department has determined that an administrative penalty of \$2 million is
16 warranted to resolve the issues encompassed in this Agreement. Health Plan has agreed to pay
17 that sum to the Department within ten days after the date of execution of this Consent
18 Agreement.

19 VI. Health Plan agrees to undertake efforts to increase its employees' awareness of
20 organ and tissue donor registration. Health Plan's Northern California Region President shall
21 send a message to Northern California Region employees providing information about organ and
22 tissue donor registration and encouraging donor registration; publicize to its employees its
23 charitable grant in support of Donate Life California; and add links to a donor registration
24 website on its intranet and public internet websites.

25 VII. On or before September 12, 2006, Health Plan agrees to provide information to
26 the Department further describing how Health Plan's charitable donation for the benefit of
27 Donate Life California via the East Bay Community Foundation was accomplished and how the
28 funds will be used.

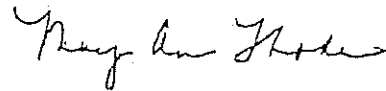
1 IN WITNESS WHEREOF, the parties hereby execute this Consent Agreement by the signatures
2 of their respective duly authorized officials.

3
4 Dated: August 9, 2006

DEPARTMENT OF MANAGED HEALTH CARE

5 
6 By LUCINDA A. EHNES
Director

7
8 KAISER FOUNDATION HEALTH PLAN, INC.

9
10 

11
12 By MARY ANN THODE

13 President
14 Northern California Region



KAISER PERMANENTE®

Kaiser Foundation Hospitals
Kaiser Foundation Health Plan, Inc.

Mary Ann Thode
President
Northern California Region

August 9, 2006

Carolyn M. Doelling
Director of Philanthropic Services
De Domenico Building
200 Frank H. Ogawa Plaza
Oakland, CA 94612

Dear Ms. Doelling:

This letter confirms that Kaiser Foundation Health Plan, Inc. (Northern California Region) ("Health Plan") will make a charitable grant in the amount of \$3 million dollars to the East Bay Community Foundation ("EBCF") for the benefit of programs and initiatives of Donate Life California. The gift is aimed at increasing organ and tissue donor registration throughout California with an emphasis on high quality, culturally sensitive and linguistically appropriate information and services to improve the number and diversity of organ and tissue donors in our state.

This charitable grant is based on EBCF's agreement to administer, disburse fully, and monitor the use of the funds by the designated recipient Donate Life California. We will follow up with EBCF and Donate Life California to formalize arrangements for the transmittal and future use of the grant funds.

Thank you very much for your assistance in this important initiative to serve the needs of our communities.

Sincerely,

Mary Ann Thode
President
Kaiser Foundation Health Plan, Inc.
Northern California Region

cc. Raymond J. Baxter, PhD.